COMPTROLLER OF INCOME TAX v. SINGAPORE A. B. ASSOCIATION

[A. C. J. (Knight J.) June 22, 1956]

[Singapore — District Court Appeal No. 9 of 1956]

Income Tax Ordinance, 1947, ss. 11(2) and 13(1)(m) — Exemption — Trade Union — Whether a trade union which is also a trade association is exempt from tax under s. 13(1)(m).

This was an appeal by the Comptroller of Income Tax from a majority decision of the Income Tax Board of Review which held that the respondents, a registered Trade Union, which it is admitted does not engage in any trade or business, should be exempt from income tax under section 13(1)(m) of the Income Tax Ordinance, 1947. The points for decision are: (a) whether a Trade Union, which is also a Trade Association, is exempt from tax under section 13(1)(m); (b) if it is not, whether the respondents are in fact a Trade Association?

Held: (1) a Trade Union is exempt from tax but if in addition to being a Trade Union it is also a Trade Association, then under section 11(2) of the Income Tax Ordinance it is deemed to carry on a business and become liable to tax; (2) on the facts of the case, the respondents are a Trade Association.

DISTRICT COURT APPEAL.

G. S. Hill (Crown Counsel) for the appellant.

C. H. Withers-Payne for the respondents.

Knight J. : — This is a very short point but one that is not without difficulty. The Comptroller of Income Tax appeals to this Court from a majority decision of the Income Tax Board of Review which held that the respondents — a registered Trade Union — which it is admitted does not engage in any trade or business, should be exempt from income tax under section 13(1)(m) of the Income Tax Ordinance (No. 39 of 1947).

Section 13(1)(m) of the Ordinance seems very clear and reads as follows :—

"There shall be exempt from tax the income of any trade union registered under the Trade Unions Ordinance, 1940, in so far as such income is not derived from a trade or business carried on by such trade union."

Prima facie this section clearly exempts the respondents from tax but section 11(2) of the same Ordinance lays down that in certain circumstances (which I do not propose to reproduce here owing to their length but which, it is admitted, apply to the respondents) a trade association may be deemed to carry on a business and taxed accordingly. The points for decision thus, are (1) whether a Trade Union, which is also a Trade Association, is exempt from tax under section 13(1)(m)? and (2) if it is not, whether the respondents are in fact a Trade Association?

For the respondents it is argued that once a body is registered as a Trade Union its liability to pay tax ceases (always assuming it does not engage in any trade or business) and although it was not admitted by the respondents that they are a trade association, it must follow that if in fact they are, they would still gain immunity on this argument under the mantle of their Trade Union's status. If this contention is correct it follows that section 11(2) and section 13(1)(m) are in conflict. The appellant maintains however that no such conflict exists and that if the two sections are read together their seeming repugnancy disappears. Quite apart from any other consideration, the legislature, says the appellant, could never have intended to nullify the effect of section 11(2) in any subsequent section of the Ordinance — leave alone in the second section immediately following it.

I am of opinion that this argument is right. Clearly a Trade Union is exempt from tax but if in addition to being a Trade Union it is also a Trade Association, then under section 11(2) it is deemed to carry on a business and becomes liable to tax. This interpretation, as I see it, is far more reasonable than it is to assume that whoever drafted this Ordinance was so inconsistent with himself that he included two sections which are utterly repugnant to one another — the latter of which has the effect in certain circumstances of making the former entirely nugatory. In short I do not think it can be assumed that the Ordinance intended to give with one hand what it had taken away with the other. As to the second of the points above, which was not argued before me at any length, I have been unable to find a satisfactory definition of a trade association (nor was one quoted to me), but the Board of Review unanimously found the respondents to be such an association and in view of their own Rules I do not see how the Board could have found otherwise. I quote certain of those Rules :—

"Rule 1(a) The name of the Association shall be the A . . . B . . . Association (hereinafter referred to as the Association).

Rule 2(a) The objects of the Association shall be to secure the complete organisation in the Association of all A . . . B . . . shop proprietors in Singapore,

(c) To take up with the local Government, Government Departments, Trade Unions or any other Associations any matter affecting the interests of the Association or the members of the Association."

The last sub-rule appears to differentiate between a Trade Union and "other Association" — the respondents quite obviously including themselves in the latter category. Be that as it may, if the respondents in facts are not a trade association their Rules provide anyone with ample grounds for thinking that they are. No doubt they will consider the question of amending their Rules and substituting the word "Union" wherever the word "Association" now appears. This might well provide a headache for the Comptroller in future but on the facts before me now I see no reason to

disturb the finding of the Board that the respondents are a trade association.

It follows that the Comptroller's assessment is confirmed and the Board's majority finding set aside. The respondents will pay the appellant taxed costs here and before the Board.

Appeal allowed.

Solicitors: *Drew & Napier.*

ANG TOON HUAN v. PUBLIC PROSECUTOR

[C. A. (Mathew C.J., Whyatt C.J. (S) and Good J.) April 26, 1956]

[K. L. — F.M. Criminal Reference No. 2 of 1956]

Rubber Supervision Enactment, 1937, s. 38(ii) — Prosecution under the Enactment may be conducted by police officer — Criminal Procedure Code (Cap. 6), s. 380(ii).

This was a reference under section 34 of the Courts Ordinance, 1948, for determination by the Court of Appeal: "Whether when a prosecution for an offence under the Rubber Supervision Enactment, 1937 is conducted by an officer other than one of those mentioned in section 38(ii) of the said Enactment the trial is a nullity.

Held: section 38(ii) of the Rubber Supervision Enactment, 1937 is supplementary to section 380 of the Criminal Procedure Code (Cap. 6), and permits of offences under the Enactment being prosecuted by the officers mentioned in section 38(ii) in addition to *inter alia* police officers who are given the necessary power to prosecute under section 380 of the Criminal Procedure Code.

Selamat bin Darmo v. Public Prosecutor[1] **overruled.**

Case referred to:—

(1) *Selamat bin Darmo v. Public Prosecutor* (1955) M.L.J. 241.

CRIMINAL REFERENCE to the Court of Appeal.

M. S. Mahendran for the appellant.

J. G. Adams (Federal Counsel) for the respondent.

Mathew C.J. : — This is a Reference under section 34 of the Courts Ordinance 1948 on the certificate of the learned Judge who heard the appeal from the decision of a Magistrate sitting at Kuala Kangsar. The point for determination by this Court is:—

"Whether when a prosecution for an offence under the Rubber Supervision Enactment, 1937 is conducted by an officer other than one of those mentioned in section 38(ii) of the said Enactment the trial is a nullity."

This point has rightly been referred to this Court, as in *Selamat bin Darmo v. Public Prosecutor*[1] Wilson J. held that:—

"All prosecutions under the Rubber Supervision Enactment must be conducted by the Supervisor or Deputy Supervisor or by any officer appointed under the Enactment and specially authorised to prosecute in writing by the Supervisor or Deputy Supervisor."

Section 38(ii) Rubber Supervision Enactment 1937 reads:—

"Any such prosecution may be conducted by the Supervisor, by any Deputy Supervisor or by any officer appointed under this Enactment and specially authorised thereto in writing by the Supervisor or a Deputy Supervisor."

It was submitted that this provision in the law confined the power to prosecute to those Rubber Supervision Officers specified in the sub-section.

Section 380(ii) Criminal Procedure Code reads:—

"In summary non-seizable cases in the Court of a Magistrate — (a) The Public Prosecutor or a Deputy Public Prosecutor or a Police Officer may appear and conduct any prosecution;"

In the case under review it was a police officer who prosecuted before the learned trial Magistrate.

In our view, section 38(ii) of the Rubber Supervision Enactment, 1937 is supplementary to section 380 of the Criminal Procedure Code, and permits of offences under the Enactment being prosecuted by the officers mentioned in section 38(ii) in addition to *inter alia* police officers who are given the necessary power to prosecute under section 380 of the Criminal Procedure Code

We, therefore, hold that the prosecution in this case was rightly conducted by a police officer and, in consequence, the appeal from the trial Magistrate is dismissed.

Order accordingly.

ANKUR NATH GANGULI v. PUBLIC PROSECUTOR

[C. A. (Mathew C.J., Whyatt C.J. (S) and Good J.) May 30, 1956]

[K. L. — F.M. Criminal Appeal No. 11 of 1956]

Criminal Procedure — Appeal — Record of proceedings — Oral judgment — Addition to — Whether can form part of the record — Courts Ordinance, 1948, s. 21(1).

If a trial Judge gives no reasons which are recorded for convicting an accused person, then and only then by subsection (1) of section 21 of the Courts Ordinance, 1948, he can on notice of appeal being given write his grounds of decision which shall form part of the record. That subsection permits only a written judgment or grounds of decision being included in the record, and this must be either the one or the other, not both. Any addition to the oral judgment cannot form part of the record of appeal.

Case referred to:—

(1) *R. v. Carr-Briant* (1943) 1 K.B. 607.

CRIMINAL APPEAL to the Court of Appeal.

K. A. Seth for the appellant.

J. G. Adams (Federal Counsel) for the respondent.